BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RICHARD L. GRAVES
(Claimant)

S.S.A. No.

PACIFIC GAS AND ELECTRIC COMPANY
(Employer)

Employer Account No.

PRECEDENT
BENEFIT DECISION
No. P-B-65
Case No. 69-1861
and
Case No. R-69-60

Prior to the issuance of Referee's Decision Nos. S-26597 and S-R-26598, we assumed jurisdiction of this matter under section 1336 of the Unemployment Insurance Code. Written argument was submitted by the employer and the Department. The claimant did not submit such argument.

STATEMENT OF FACTS

The employer appealed to a referee from a Department determination and ruling which held that the claimant had voluntarily left his most recent work with good cause and that the employer's reserve account is subject to benefit charges. The determination also held the claimant did not wilfully make a false statement for the purpose of obtaining benefits (Case No. S-26597).

The employer also appealed from a Notice of Determination on Charge to Reserve Account which held the employer's reserve account charged ten times the claimant's weekly benefit amount in the total amount

of $620 on the ground that the employer wilfully failed to report material facts concerning the termination of the claimant's employment (Case No. S-R-26598). These two matters are consolidated for decision under the provisions of section 5107, Title 22, California Administrative Code.

At all times relevant herein the claimant has been a student. In 1968 he attended the Yuba Junior College.

The claimant was originally hired by the employer on July 7, 1966 as a helper, temporary additional, for vacation relief purposes. On September 6, 1966 his position was changed to helper, temporary additional, part time. At this time the claimant worked on a part-time basis while attending school. The job terminated on December 2, 1966.

On June 19, 1967 the claimant was employed as a warehouseman, temporary additional, for vacation relief purposes. On September 8, 1967 this employment terminated. On October 10, 1967 the claimant was again employed as a warehouseman, temporary additional, part time, and the claimant performed this employment on a part-time basis while he attended school. On November 24, 1967 this employment terminated. On April 8, 1968 the claimant was reemployed as a warehouseman, temporary additional, part time, and performed this work at the same time he attended school. This job ended with commencement of full-time temporary work as a warehouseman in June 1968.

On June 17, 1968 the claimant was employed as a warehouseman, temporary, for the reason that the employer needed full-time help for vacation relief purposes. On September 17, 1968, the day before the claimant returned to school, his employment terminated.

The claimant completed the 1968 fall semester at the junior college and then filed a claim for unemployment insurance benefits which was made effective February 2, 1969. The claimant reported to the

Department the reason for the termination of his last work was "job terminated" and "I was hired for summer help and the job terminated." The employer reported the reason for the termination of work as follows: "Claimant resigned to return to school. He was employed as a Warehouseman at $26.22 per day."

When the claimant began full-time work on June 17, 1968, it was understood by the claimant and the employer that the work would end at the end of the school vacation period so that the claimant could return to school in September 1968.

In late June 1968 the claimant was uncertain whether he would return to school as a full-time student in the fall of 1968 because he needed only a few subjects to complete his course of study. The claimant took a written test with the employer to see if he could qualify as a permanent full-time employee for the employer. On June 28 he was informed he had not passed this test. Normally this test is given on a one-time basis.

In August 1968 the claimant inquired whether he could continue in employment after the end of the vacation period on a part-time basis. The employer could not offer the claimant either part-time or full-time work after September 17, 1968.

The employer prepared an internal personnel document which said, in part, that the employment terminated for the reason the claimant resigned to return to school. The claimant signed this document without argument as he had signed several other similar forms on prior occasions.

Upon inquiry by the Department, the complete details and circumstances concerning the claimant's employment were furnished by the employer. The Department, however, issued the Notice of Determination on Charge to Reserve Account on the ground that the employer originally had failed to provide

all the information concerning the termination of the claimant's employment; namely, that the employer had failed to notify the Department that the claimant had been hired only for the summer vacation period.

REASONS FOR DECISION

Section 1030.5 of the Unemployment Insurance Code provides:

> "1030.5. If the director finds that any employer or any employee, officer, or agent of any employer, in submitting facts pursuant to Section 1030 or 3701, willfully makes a false statement or representation or willfully fails to report a material fact concerning the termination of a claimant's employment, the director shall make a determination thereon charging the employer's reserve account not less than 2 nor more than 10 times the weekly benefit amount of such claimant. The director shall give notice to the employer of a determination under this section. Appeals may be taken from said determinations in the same manner as appeals from determinations on benefit claims."

Although the claimant herein did not resign to return to school, this fact, as reported by the employer, resulted from a simple error rather than a wilful false statement or wilful withholding of material facts. The error was adequately explained or corrected before the issuance of the Department's determination. The employer in good faith reached an erroneous conclusion on a technical issue, and it would be unfair to penalize an employer for a false statement under such circumstances. (See Appeals Board Decision No. P-R-29)

Section 1257 of the code provides in part:

> "1257. An individual is also disqualified for unemployment compensation benefits if:

"(a) He wilfully made a false statement or representation or wilfully failed to report a material fact to obtain any unemployment compensation benefits under this division."

The claimant reported the reason he was no longer working was "job terminated" and "I was hired for summer help and the job terminated." We agree that these facts as reported by the claimant are correct and hold the claimant was not subject to disqualification under section 1257(a) of the code.

Section 1256 of the code provides:

"1256. An individual is disqualified for unemployment compensation benefits if the director finds that he left his most recent work voluntarily without good cause or that he has been discharged for misconduct connected with his most recent work."

Section 1030(a) of the code, as amended, provides:

"1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his leaving to return to school at the close of, his vacation period. The period during which the employer may submit such facts may be extended by the director for good cause." (Emphasis added; 1968 amendment delineated)

Section 1032 of the code, as amended, provides:

"1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause or was discharged by reason of misconduct connected with his work, or that he was a student employed on a temporary basis and whose employment began within, and ended with his leaving to return to school at the close of, his vacation period, benefits paid to the claimant subsequent to the termination of employment due to such voluntary leaving or discharge, or due to the termination of the temporary employment of a student whose employment began within, and ended with his leaving to return to school at the close of, his vacation period, which are based upon wages earned from such employer prior to the date of such termination of employment, shall not be charged to the account of such employer unless he failed to furnish the information specified in Section 1030 within the time limit prescribed in that section." (Emphasis added; 1968 amendment delineated)

The situation existing at the time of termination of employment; that is, the factors which precipitated and were the immediate cause of the claimant's unemployment, govern the claimant's eligibility for benefits under section 1256 of the code.

In Appeals Board Decision No. P-B-37, we stated:

"In applying the provisions of section 1256 of the Unemployment Insurance Code it must first be ascertained who the moving party was in the termination of the employment. If the claimant left employment while continuing work was available, then the claimant is the moving party in the termination. On the other hand if the employer refuses to permit an individual to continue working although the individual is ready, willing, and able to continue work, then the employer is the moving party in the termination of employment."

Here the claimant wished to continue in employment beyond the summer vacation period. If he could have obtained such employment he would have foregone a return to school. However, the employer could not offer the claimant continued employment. Therefore, the employer was the moving party in the termination of the employment relationship; and, since the termination was for reasons other than misconduct connected with the work, the claimant is not subject to disqualification under section 1256.

By the amendments to sections 1030(a) and 1032 the legislature intended to encourage the hiring of students for vacation work by permitting the noncharging of employer's reserve accounts for benefits paid based on wages earned while temporarily employed during the vacation period, provided certain conditions were met; namely, that the "employment began within, and ended with his leaving to return to school at the close of, his vacation period."

Here the claimant's full-time employment began within and ended at the close of his vacation period, and as the claimant last worked on September 17, 1968 and began school on September 18, 1968, we find the claimant's employment "ended with his leaving to return to school at the close of, his vacation period." Therefore, the employer's reserve account is relieved of charges as to benefits paid based on wages earned from that employment encompassed within the provisions of sections 1030(a) and 1032 of the code, as amended, effective November 13, 1968.

DECISION

The determination of the Department in Case No. S-26597 is modified as to grounds but affirmed as to result. The ruling of the Department is reversed. The claimant is not disqualified for benefits under sections 1256 and 1257(a) of the code. The employer's reserve account is relieved of benefit charges under section 1032 of the code.

The determination of the Department in Case No. S-R-26598 is reversed. The employer's reserve account is not subject to additional charges under section 1030.5 of the code.

Sacramento, California, January 8, 1970.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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